

MAINE ETHICS COMMISSION

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IN THE MATTER OF:

MAINE HERITAGE POLICY CENTER

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October 31, 2006

HELD AT: County of Maine

BEFORE: HONORABLE ANDREW KETTERER
Chair

APPEARANCES: HON A. MAVOUREEN THOMPSON
HON MICHAEL FRIEDMAN
EXEC DIR JONATHAN WAYNE
COMM COUNSEL PHYLLIS GARDINER, ESQ.
DANIEL BILLINGS
JONATHAN CRASNICK
WILLIAM BECKER
CARL LINDEMANN

TRANSCRIBER: LISBA OSAKWE

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>V.</u>	<u>J</u>
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E X H I B I T S

<u>PETITIONER</u>	<u>DESCRIPTION</u>	<u>For</u>	<u>In</u>
		<u>I.D.</u>	<u>Ev.</u>

<u>RESPONDENT</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
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2 HON. ANDREW KETTERER: We are now
3 turning to agenda Item 10, request for
4 investigation Maine Heritage Policy Center
5 and our colleague Jean Ginn-Marvin has
6 recused herself from the inquiry and any vote
7 that might be taken and she is not present.
8 Okay. Jonathan, what can you tell us about
9 this?

10 MR. JONATHAN WAYNE: Well this is a
11 request for a investigation brought by Carl
12 Lindemann, who is here today and he would
13 like the opportunity to speak to you about it
14 and then against the Maine Heritage Policy
15 Center and that center is here as well to
16 make comment. If I could just mention what
17 the legal reporting requirements are that are
18 best used -

19 HON. KETTERER: Okay.

20 MR. WAYNE: Certain organizations that
21 are trying to influence ballot questions
22 qualify as a PAC under Maine law in which
23 case they have to register with the
24 Commission and file regular reports with us
25 on scheduled deadlines and this of course

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2 have to include all of their expenditures
3 whether they are directly related to the
4 referendum or not. But that — there is
5 another provision which we don't really have
6 a good name for it, Section 1056-B in the law
7 —

8 HON. KETTERER: That's a good name right
9 there.

10 MR. WAYNE: Yes. Yes, we just refer to
11 it as the 1056B report. But it was
12 instituted by the legislature in the year
13 2000 and it says that persons and
14 organizations who are not a PAC, that raise
15 or spend more than \$1,500 have to file
16 reports with the Commission and it just kind
17 of an abbreviated report of the money that
18 would come in related to the ballot
19 initiative and then also the expenditures.

20 But at that, let me just if I could
21 because it's only one sentence long, read you
22 exactly what the reporting permit is. It's
23 important to know exactly that statute says
24 and to recognize that it's very — that the
25 way the statute is written is very broad. And

one of the things that is at issue here, is whether the Commission wants to take the statutory requirement at face value which seems to call for very broad reporting of expenditures or whether it wants to interpret it as a defensive view and adopt a more narrow interpretation.

So what the statute says is, any person not defined as a political committee who solicits or receives contributions or makes expenditures other than by contribution from a political action committee aggregating in excess of \$1,500. And here is the broad part. For the purpose of initiating, promoting, defeating, or influencing in any way a valid question, must file a report with the Commission.

So Mr. Lindemann complaint suggests two things. He notes that the Maine Heritage Policy Center has been very active in analyzing TABOR and making positive statements about TABOR and the press and so forth and actually wrote the TABOR legislation. And he says, well why isn't

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2 this organization either a PAC that has to
3 file regular reports with the commission or
4 why isn't it in his view, is making
5 expenditures to influence the TABOR, why
6 isn't it under an obligation to file these
7 1056B reports. So that's a legal issue.

8 HON. KETTERER: Thank you. Does the
9 Commission members have any question for
10 Jonathan?

11 MAVOUREEN THOMPSON: Yes. Could you
12 just Jonathan tell us again, the information
13 or the requirement for being labeled a PAC?

14 MR. WAYNE: Well it's long.

15 MAVOUREEN THOMPSON: Well -

16 MR. WAYNE: It's [Unintelligible}. Well
17 there are four different parts okay. One of
18 the sub-parts is - any organization that has
19 as its major purpose, advocating the passage
20 or defeat of a valid question and that
21 solicit funds for members or non members who
22 spends more than \$1,500 in a calendar year to
23 initiate advance promote, defeat or influence
24 in any way, a candidate, campaign, local
25 party referendum or initiated petition in the

1
2 state, that there are four, sub-parts in that
3 mission and if an organization qualifies as
4 any one of those four categories, under the
5 law, it would be a PAC.

6 In the memo that I got to you, late in
7 the business day yesterday, I don't know
8 whether you had a chance to look at it, seem
9 to ask that the Maine Heritage Policy Center
10 was not a PAC but I didn't intend to go into
11 my analysis at this point [Unintelligible].
12 I think there's some question whether the
13 Center might be required to file a 1056B
14 report but in our view because the Center is
15 really a research and analysis organization
16 and there's a lot that's unrelated to paper,
17 just trying to express its views on what's
18 responsible fiscal spending and taxation and
19 health issue and so forth, it doesn't seem to
20 be that it would meet the definition of what
21 is a PAC.

22 But there is this other question which I
23 think should also be considered, which is do
24 they also have to file these other reports,
25 the 1056-B.

HON. KETTERER: Anything further? Okay let's see. Should we turn to Carl Lindemann — I'm sorry, yes.

PHYLLIS GARDINER: Yes.

HON. KETTERER: Phyllis Gardiner.

PHYLLIS GARDINER: I just want to say, because the LaMarche case is [Unintelligible] too, I'm going to step out the door at about 12:30 I didn't want to interrupt the discussion. So I'm sorry but —

HON. KETTERER: We are always happy to have you here and we understand that it is arguably a higher tribunal than this one.

[Laughter]

They have a compulsory process and even worse up there. So, okay thank you and thank you for your good representation of our group and when you leave we'll know the reason why. Okay, I'm sorry, would you state your name please for our record?

MR. CARL LINDEMANN: Carl Lindemann.

HON. KETTERER: And tell us what you think we should know about this matter.

MR. LINDEMANN: Well in response to the

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2 trialing late yesterday afternoon, we had
3 given a number of examples of what I feel to
4 be clear advocacy actions taken on Maine
5 Heritage Policy Center. And there's a
6 substantive issue here in the changing media
7 environment. It's what constitutes advocacy
8 versus education and this is really worthy of
9 some significant reflection, particularly in
10 a changing media environment where what's
11 public relation and paid advertisement and so
12 forth, is very much the thing.

13 My primary interest is, when I turn on
14 the radio, I hear a discussion between a pro
15 and a con for a particular measure, I think I
16 should be able to look up somewhere and find
17 out who's funding these statements. It seems
18 reasonable. It seems that the legislative
19 intent of the Commission here is to be able
20 to offer that to the voters. So if we're
21 going to have privately funded elections, we
22 should know who's putting up the money.

23 Now, again this real issue and this is a
24 matter of your discrimination as to what's
25 educational and what's advocacy. And you

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2 have these numerous examples to take a look
3 at. But for me, again what was clear to me
4 was that I could not research were the
5 dollars were coming from on one side of this
6 debate where it appears to be the clear
7 advocates for TABOR. Now, I also raised this
8 question as far as what is an education
9 organization? Now I don't know about the
10 funding here. That's opaque to me because
11 Maine Heritage Policy Center is by its own
12 description, an educational and research
13 organization. And as such, I mean my
14 understanding of what an educational
15 organization is, is that hopefully it's in
16 the proud tradition of other Maine
17 educational organizations like Bowdoin or
18 Hebron Academy. They are in the education
19 business.

20 I wonder if they really are an education
21 organization in that fashion. Again, I say
22 look at their deeds but also what research is
23 publicly available for what information is
24 available about them, it seems that they are
25 an unusual organization in terms of

educators. I just am -- generally the [Unintelligible] educational organizations have educators in them and they are in the business of providing education through whatever means. And looking at Maine Heritage Policy Center, what I found on their web site when I searched online, because I could not find where the dollars were coming from, so I did additional research.

I found that there are strong academic connections, that they do have roots in academia which I would expect and I saw that Ronald Trowbridge the organization's founder had spent much of his career at Hillsdale College which is a very well known, nationally known, conservative school in Michigan and that in his brief time after leaving that school he came to Maine and he founded Maine Heritage Policy Center and then has moved on.

And I thought okay, well his academic spirit helped shape this organization and then I realized that he was never at Hillsdale as an educator. He was in the

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2 promotions and marketing. So he's in the PR
3 business there. But even so, Maine Heritage
4 Policy Center is an education organization.
5 So I looked further on the staff list and I
6 see that Mr. Becker too has worked in
7 educational organizations but not as an
8 educator but as a fund raiser. And again,
9 looking through the staff, I didn't find a
10 single educator except, there was - there's
11 one person on the Maine Heritage Policy
12 Center staff who has got an educational
13 background and that's April Ross the office
14 administrator has certification as a K
15 through 6 or social studies teacher.

16 So that's the academic credentials of
17 the education organization here. Again it's
18 - there aren't any educators on the staff,
19 but this is an educational organization.
20 Now, more to the point and directly to the
21 Commission's concerns there is another
22 important difference that I perceive between
23 the Maine Heritage Policy Center and what we
24 usually consider the way that education
25 organizations operate. And that is, they

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2 generally develop a reputation for their
3 education and research in specialized areas
4 and then they receive dedicated fund raising
5 and financial support for that.

6 For example, Bowdoin would develop an
7 Asian Studies Department and they'll
8 fundraise for that. And Mr. Billings has
9 testified – I don't know, this is not sworn
10 testimony. I'm not sure what the status is,
11 but he's testified in any case, that they
12 have not received any contributions to
13 support their paperwork and that's despite
14 the high profile they've received for this.
15 And I think that's again, a very interesting
16 contrast. Generally the way we think of
17 educational organization operates, that
18 they've established this high profile and
19 they don't receive any funding or don't seek
20 any funding and don't take any funding for
21 something that's become their marquee issue?
22 Very interesting.

23 But it is an education organization
24 right? It's a contrast. So what I really am
25 asking – again I'm not an attorney. I'm just

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2 a – and in fact I was in great pains as to
3 whether I had standing here, that out of
4 state, I expecting to be coming back to the
5 state soon and just seem absolutely that
6 here, a major player in a very crucial
7 political issues, the funding is opaque. For
8 whatever reason and there may be legal
9 reasons, it may be absolutely fine what they
10 are doing. But that's something again, very
11 serious reflection here in the state if we
12 want to have transparency.

13 And if in my opinion, the Maine Heritage
14 Policy Center's action as what appear to be
15 to be lead advocates for Tabor (phonetic), if
16 their actions as such are allowed to go
17 unquestioned, then disclosure is really up
18 for grabs. And the voters of Maine, I feel,
19 are going to have some very hard lessons if
20 this is set as a precedent, if they want to
21 learn who's funding what in the future.

22 So in that I guess my deepest concern is
23 that rather than promoting voter education,
24 the Maine Heritage Policy Center's actions
25 here are going to actually establish a

1 precedent that's going to institutionalize
2 voter ignorance. I am sure that's not their
3 intention. But that may well be the up shot.
4 And again, I'm sorry that this has been
5 brought to your doorstep on the eve of this
6 vote. I'd actually been shaking around with
7 my contacts in the state and still hoping
8 somebody else would. This is not my desire
9 to be here today. This is not how I
10 generally spend my vacation in Maine. But I
11 felt very strongly that having worked in the
12 media business, the transparency is
13 absolutely critical in our political process.

14 And here there is a situation that
15 really threatens that fundamental right for
16 the voter to know who's paying for what.
17 Thank you.

18 HON. KETTERER: Thank you. Questions by
19 Commissioners for Mr. Lindemann.

20 MAVOUREEN THOMPSON: Are you aware of
21 the requirement for being designated a PAC?

22 MR. LINDEMANN: Mmm hmm.

23 FEMALE VOICE: And what do you think
24 about the argument against MHPC being
25

designated as a PAC?

MR. LINDEMANN: Again, I think the larger substantive issue is in a changing media environment, whether that definition of a PAC and I put in my initial filing, where earned media and paid media, the value of those are shifting and the idea that you can carry out a public relations campaign to gain extensive media exposure and not be a PAC, as public relations becomes increasing valuable, then you've got a real problem.

Again that's -- so it may well be again, as I say, in this particular instance, they may be actually according to Hoyle that this situation has raised a fundamental issue that has to be looked at.

MAVOUREEN THOMPSON: Are you aware of whether -- you're certainly not talking about the pro (phonetic), people speak in pro and people speak in con and so forth. Are you -- you have any information as to whether those who are speaking opposite the MHPC are in fact registered as a PAC?

MR. LINDEMANN: Sure. For example,

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2 yesterday morning on WGAM, did a two hour
3 debate between Mr. Becker and Dennis Bailey
4 (phonetic). It was very, very interesting to
5 see, because they are squared off as equals.
6 Here is the pro Tabor, here is the anti
7 Tabor. And at the very end, the – Mike
8 Violet, the conservative host of the show
9 gave Mr. Becker the last call, said, give us
10 a yes on one statement. And he launched in
11 to say you know, a pitch. Dennis Bailey said
12 hold on you can't lobby. Did he lobby? Did
13 he not lobby? Listen to the clip and see.

14 But the public reception, the average
15 person tuning in, it seems very, very clear
16 that Mr. Becker is acting as a spokes person,
17 that he wanted to give disclaimers you know,
18 I'm just for the sake of debate, stepping in
19 here and offering what would be the pro Tabor
20 view, given my studies and – in other words,
21 that academic reserve. I think that academic
22 reserve and disclaimer is clearly not present
23 here. And again I leave it – that's your
24 judgment on that.

25 I think reading the media stories, it's

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2 very, very clear that the reports recognize
3 Mr. Becker as the primary spokes person,
4 having been in the news business, you go to
5 the primary spokes person for a cause for the
6 lead comment. And I find Mary Adams
7 (phonetic) comments were at the bottom of the
8 story. They're buried.

9 So whether or not he's legally a PAC,
10 he's certainly taken on the role in the media
11 as such. And again whether we – the real
12 fault here is sloppy media reporting for not
13 properly recognizing him for merely playing
14 the role of analysis rather than advocate.
15 But that boundary I've never seen them ask
16 for a correction either. So maybe they do
17 publish [Unintelligible].

18 HON. KETTERER: Thank you Mr. Lindemann.
19 Anyone else here from your side of this issue
20 that you're aware of? Okay, thank you. Why
21 don't you take a seat and sir why don't come
22 up and tell us what your name is and what you
23 would like us to know.

24 [Pause]

25 Why don't you take the empty chair right

there?

MR. JOHN CRASNICK: My name is John Crasnick, I'm an executive director of Democracy Maine, I spoke briefly at the last meeting. I would like to start by thanking the Commission and the staff for looking into the issues that were raised by Mr. Lindemann's complaint. Democracy Maine like the Maine Heritage Policy Center is a non profit organization that has been involved in the Tabor debate. Unlike the Maine Heritage Policy Center, Democracy Maine, will be filing a 1056-B for today with this office, because although not a PAC, Democracy Maine has specifically raised a little bit of money or tried to raise money for the specific purpose of defeating Tabor and has spent well over \$1,500 to do so.

Now I have read the recent letter from the Maine Heritage Policy Center's attorney to this Commission, attempting to differentiate itself from other groups such as Democracy Maine by saying well, Maine Heritage Policy Center hasn't created any

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2 political advertisement saying vote for
3 Tabor. But claims in the letter that Maine
4 Heritage Policy Center has not been an
5 advocate in favor of Tabor are simply not
6 factual. The staff has again, written and
7 published reports, having the benefits of and
8 a need for Tabor, provided speakers from out
9 of state who have spoken in favor of Tabor,
10 promoting Tabor on the radio programs and
11 most importantly debated in favor of Tabor in
12 Maine, three times a day in debates.

13 Just like last night for example, on a
14 televised debate, Mr. Becker took part in a
15 debate. It's not – the debate is not an
16 educational forum. The debate has someone in
17 favor of Tabor, arguing against someone in
18 opposition of Tabor. Mr. Becker debated
19 against someone, Dennis Bailey who is being
20 paid by Citizens United, the anti Tabor PAC.
21 Mr. Becker's time should at the very least,
22 be counted and reported as an in-kind
23 contribution to the pro Tabor PAC,
24 taxpayerbillofrights.com. For an hour, over
25 an hour last night and in several other

debates yesterday, Mr. Becker spoke about the benefits of Maine's need for Tabor.

The staff at the Maine Heritage Policy Center may have been careful not to say vote for Tabor, but in dozens of debates and newspaper op-eds, including another one yesterday in the Bangor Daily News, that they had told people why they should vote for Tabor. Now, Maine does not require non profit organizations to disclose their contributors. But laws do require that non profits list them in a 1056-B, money that they raised specifically to influence a referendum and to list money that they spent to influence a referendum.

Like I said before, Democracy Maine will file its 1056-B today as will other non profits, such as the Maine Center for Economic Policy, the Maine Women's Lobby and the Maine Municipal Association. The Maine Heritage Policy Center has been heavily involved in the campaign to enact Tabor and should be required to follow the same laws as other non profit whether they have said vote

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2 for Tabor or not.

3 And the line that stood out in their
4 attorney's recent letter to the Commission
5 is, while the Maine Heritage Policy Center's
6 activities may, may is underlined, influence
7 the referendum on the Maine Taxpayer's Bill
8 of Rights, the Heritage Policy Center has not
9 solicited or accepted contributions or made
10 expenditures for the purpose of initiating,
11 promoting, defeating or influencing in any
12 way, the outcome of the referendum.

13 That statement is unacceptable to me
14 because if their activities may influence the
15 outcome, then a value should be placed on
16 that. And so even if they haven't raised any
17 money, even if they haven't written a check
18 in spending specific money, at the very
19 least, then that activity should count as an
20 in-kind contribution to the pro Tabor PAC.
21 And I think that any reasonable review of the
22 activities that they are taking part in,
23 since the start of this campaign, would show
24 that the staff has advocated in favor of
25 Tabor and that they have been major players

1
2 in the campaign for its passage.

3 And I just ask that you hold the Maine
4 Heritage Policy Center to the same standard
5 as other groups involved in this issue.

6 HON. KETTERER: Thank you Mr. Crasnick
7 for your comments. Questions by Commission
8 members for Mr. Crasnick. Yes.

9 MAVOUREEN THOMPSON: Is Democracy Maine
10 registered as a PAC or not? But you are
11 going to file a 1056-B form?

12 MR. CRASNICK: Yes.

13 MAVOUREEN THOMPSON: And what argument
14 would MHPC have to justify not registering it
15 as a PAC? Can you compare those to what -

16 MR. CRASNICK: (Interposing) I can tell
17 you what I did. And this is the second
18 referendum that we would have to get involved
19 in and personally I always do as I called
20 Martha Demerit (phonetic) and I asked her, I
21 said we are a non profit that gets involved
22 in many different issues. We want to get
23 involved in this referendum. We are going to
24 try and raise money and we will be spending a
25 lot of money.

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2 She said that we do not have to register
3 as a PAC because according to her and she has
4 - and it's documented. She said that we were
5 not created solely to defeat Tabor. This is
6 something that we've decided to get into for
7 the last three months. So therefore, we
8 don't need to register as a PAC. All we need
9 to do is if we spend more than \$1,500 and if
10 we raise money, we need to file a 1056-B.
11 That would - my guess be Heritage Policy
12 Center's argument for not having to register
13 as a PAC.

14 I am not - I am not in any way saying
15 they should. I agree with Jonathan, they are
16 involved in many different issues and they
17 are - they do do research. But in this case,
18 I feel that their research has promoted Tabor
19 and they have been - I would agree with Mr.
20 Lindemann, maybe even more than Mary Adams
21 the spokesman. And they clearly have
22 promoted it. And I think if you put a value
23 on that it would - on their time, it would
24 equal \$1,500 and therefore, should file a
25 1056-B as persons other than a PAC.

COMMISSION MEMBER: Thank you.

MICHAEL FRIEDMAN: I take it you're comfortable with the assertion that they are not a PAC?

MR. CRASNICK: Yes sir.

MICHAEL FRIEDMAN: Okay.

MR. CRASNICK: Yes sir.

MICHAEL FRIEDMAN: So your only concern is, is one that they haven't filed -

MR. CRASNICK: I think you know, Democracy Maine had not reached the \$1,500 mark at the last deadline, which is why tomorrow is the first 1056-B we will file. But I looked on line and the Maine Women's Lobby is a C-3 that had filed the Maine Center for Economic Policy is a 501C3. The Maine Municipal Association is a non profit that have filed. These are all groups that have done the same thing. They have debated, they have gone to different groups, they have educated and they have listed their expenditures and their in-kind contributions to Citizens United because there's a value placed on those activities.

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2 And I think you should look at what the
3 Heritage Policy Center has done on Tabor and
4 how active they have been. It would be
5 difficult not to place a value on their
6 activities and you know, we are not saying
7 they need to disclose all the money, we are
8 not saying that they should register as a
9 PAC. All we are saying is they should follow
10 the same rules as other non profits who have
11 been active in this. Non profits really are
12 a loophole. They know, until the 1056-B,
13 they could get involved in referendums and
14 not say where any of the money came from.

15 The 1056-B has changed that a little bit
16 and now if you raise any money specifically
17 for the referendum, you have to show that.
18 You can also use your general funds that you
19 don't have to show. But a 1056-B begins to
20 put a little bit of — you know, show a little
21 bit of light on these groups that are getting
22 involved in referendums. And I think you
23 know, to say that they have been educating
24 but not advocating and that they haven't been
25 the main spokesman is untrue and that they

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2 should be held to the same standards.

3 HON. KETTERER: [Unintelligible} All
4 right, thank you Mr. Crasnick.

5 MR. CRASNICK: Thank you very much.

6 HON. KETTERER: Anyone else on this side
7 of the request for an investigation that
8 wants to be heard in this matter? I see
9 none. The Maine Heritage Policy Center or
10 their counsel? And the counsel.

11 MR. DANIEL BILLINGS: Good afternoon.
12 My name is Dan Billings. I am here on behalf
13 of Maine Heritage Policy Center and Bill
14 Becker is here also from the center and he
15 has to answer any specific questions about
16 the center's activities and he would be glad
17 to do that.

18 In preparation for this meeting as well
19 as submitting the letter that you have before
20 you, we also presented the staff with a
21 active information which details I believe,
22 all of the center's publications in the past
23 year and just to give you a flavor of the
24 type of activities that the organization is
25 involved in so we don't have an issue that

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2 this is somehow an organization that was put
3 together to promote the Taxpayer Bill of
4 Rights which is an organization which has a
5 much -- a very broad mandate. And I think
6 that the materials that have been submitted
7 show that.

8 I think the memo that was put together
9 by your staff focuses the issues quite well
10 and I -- contrary to some of the prior
11 comments, I hope we can focus the decision on
12 the laws that are within your jurisdiction.
13 The first speaker today, has all sorts of
14 issues and maybe legitimate policy
15 discussions for another body at another time.
16 A lot of the issues that he raised do not
17 come under your auspices.

18 I agree with the staff memo and frankly
19 the speaker from Democracy Maine really what
20 this comes down to is really the issue is
21 whether or not MHPC needs to file a 1056-B
22 report. And MHPC has not specifically
23 solicited or accepted any contributions to
24 support the Taxpayer Bill of Rights. So as a
25 result, even if Maine Heritage Policy Center

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2 has to file a 1056-B report, that would only
3 show their expenditures. It would not show
4 any contributions because they haven't
5 accepted any contributions related to the
6 Taxpayer Bill of Rights.

7 So Mr. Lindemann's concern about
8 funding, which is something that he was
9 raising with the IRS in regards to Maine
10 Heritage Policy Center long before this
11 issue, that's not going to be addressed by
12 the issue before you here today, assuming you
13 agree with the staff that MHPC is not a PAC
14 and interestingly is one of the parties on
15 the other side agrees with our intention.

16 So the issue about where the money is
17 coming from, that maybe a legitimate issue.
18 That may be a policy issue, but that's really
19 not before us here today unless someone has
20 information which no one's come forward yet,
21 to show that MHPC has been soliciting or
22 accepting contributions specifically for the
23 Taxpayer Bill of Rights.

24 The second issue that comes down to -
25 I'm focusing on legal issues, is the wording

1
2 of the statute versus what I believe is a
3 constitutional issue about what the state can
4 regulate in this area. I think if you apply
5 the plain language of the statute, which is
6 very broad, MHPC's activity would fall under
7 the statute as written, because it's any
8 activity promoting, influencing, falls under
9 that. So I would certainly recognize that.

10 The case law that I've had a chance to
11 review and I believe the counsel has reviewed
12 as well, and I think we would both be in
13 agreement, we've been under a time crunch
14 here so it's not the kind of in depth
15 research that I would do if I were submitting
16 a brief. But it does seem that the courts
17 across the country, are consistent that the
18 line is drawn at express advocacy. And you
19 of course, discussed this at length last
20 month and are well aware of what that line
21 is.

22 But we are into a situation where the
23 magic words matter. And I think they matter
24 even more in this context because there are
25 lots of organizations that talk about issues

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2 and they talk about issues in conjunction
3 with the legislature, in conjunction with
4 referendum or just in the press generally and
5 that how much of that speech you're going to
6 bring under regulation is an important
7 consideration.

8 So I would - I would suggest to you that
9 you read the law with an express advocacy
10 test in mind and that MHPC or any
11 organization only be required to file a
12 directive expressly advocating the passage
13 that could be a referendum. And the people
14 who are supporting the complaint are coming
15 forward with all sorts of information which
16 I've gone through and other people involved
17 in the center have come through and certainly
18 illustrates that MHPC has been active talking
19 about that matter. We certainly recognize
20 that.

21 But I haven't seen anything that says
22 that MHPC has been telling people how to
23 vote. Certainly you can read - you know
24 they've made comments that may influence
25 people's vote but they are not specifically

1
2 advocating a certain vote. So with that, I
3 don't believe they should be required to file
4 a 1056-B report.

5 The other issue that I these you should
6 keep in mind is, there are certain
7 organizations that have filed and I guess we
8 won't know some of these other organizations
9 until tomorrow. But I suspect it's possible
10 they might have spent staff time and other
11 resources on these issues that
12 [Unintelligible}. Just as a happenstance, I
13 picked up my mail on Saturday and there is a
14 foundation newsletter from MSAD-75 which is
15 the school district where I live in Bowdoin,
16 Bowdoinham, Richmond, and Topsham and they
17 have a newsletter that they do report five
18 times a year and in the article on the
19 newsletter is that the MSAD-75 voters records
20 opposed Tabor. And the front page is all
21 about that and most of the second page is a
22 copy of the resolution that the board adopted
23 that specifically opposes Tabor and ask the
24 voters in MSAD-75 to vote no on question one
25 on November 7th.

1
2 Now I don't know what they spent for
3 this, but if they are there very well
4 compensated superintendent spent much time on
5 this, it wouldn't take much to get over the
6 \$1,500 threshold plus whatever probably half
7 of this newsletter I think you could - or a
8 little less than that you could attribute to
9 advocating the Taxpayer's Bill of Rights and
10 whatever cost to produce this and mail this
11 to every household in the four towns, I think
12 it's likely that even a conservative
13 estimated expenditure will put them over
14 \$1,500.

15 And I just raised this as an example and
16 I'm sure I actually know and respect the
17 superintendent very well know that if he had
18 thought about this, they'd probably have
19 filed a report. But I know the there are
20 lots of other organizations, particularly
21 government organizations who've been very
22 active in the Taxpayer's Bill of Rights and
23 I've yet to see any of them file anything as
24 far as the amount of money they are spending.
25 Some of them may stop short of actually

1
2 advocating, though I know that some of the do
3 cross that line. And maybe there will be a
4 flood of reports tomorrow from all those
5 groups but I doubt it.

6 And in things like - I mean I certainly
7 have no dispute with the staff's work on this
8 activity because a complaint has been brought
9 forward and it is a serious issue and they
10 have acted appropriately. But I do think
11 that this is an area where lots of people get
12 involved in different ways in referendums and
13 I don't think there's been much of an effort
14 to educate people about when they come under
15 or may come under these campaign finance
16 laws. It's much different from the candidate
17 - candidate elections which you spend most of
18 your time dealing with, when if you file
19 nomination papers to become a candidate,
20 somebody sends you a report saying you need
21 to do this too.

22 And you need a political action
23 committee that's formed to support, oppose or
24 educate people about candidates there is a
25 more - there's a line that's crossed. What's

1
2 happened here in the case of MHPC and frankly
3 a lot of other organizations, if a pre
4 existing organization that has things to say
5 on matters of public interest and that's what
6 they do on a daily basis and a referendum
7 comes about and they continue to do that.
8 And that's what MHPC has done.

9 The kind of activities they've engaged
10 in over the last few months are the kind of
11 activities they were engaged in before the
12 Taxpayer Bill of Rights was put on the ballot
13 and the same kind of activities they will be
14 involved in after November 7th no matter how
15 the vote comes out.

16 So I think that is different than an
17 organization that is set up specifically to
18 pass or defeat a referendum. And I do think
19 some of the factual allegations have been
20 made earlier about Mr. Becker being the
21 primary spokesman for the campaign is not
22 true. But there is a political action
23 committee that has been set up to support
24 passage of the referendum. Mary Adams and
25 Roy Lenardson and their people in charge of

1
2 that political action committee, they've been
3 very active both in the press and in debates
4 and in other ways. Sure the Maine Heritage
5 Policy Center does get called by the press.
6 I think part of that is because they are
7 looked at as the substantive people who can
8 talk about the policy involved. You know, no
9 offence to Roy and Mary, but they are the
10 political people and they are making the
11 political arguments and they are talking
12 about why people should vote for them when
13 people are looking for more substantive
14 answer and what the analysis may show, they
15 tend to call Bill because he is not a
16 political person. He is not somebody who is
17 working on a campaign but he is somebody with
18 him and his staff have spent a great deal of
19 time looking at this issue and Maine's
20 economy.

21 But I think it's natural that you get
22 all [Unintelligible] to vote [Unintelligible]
23 people. And Bill's here and he'd certainly
24 be glad to answer any questions about the
25 Center's activities because I do think that

1
2 the factual -- this is an issue where the
3 facts of what's actually going on I think,
4 should play into your decision.

5 HON. KETTERER: Thank you. Any
6 questions by Commission members for Dan
7 Billings? Go ahead.

8 MICHAEL FRIEDMAN: Yes, let me just have
9 you assume that we determine that the Policy
10 Center is not a PAC but that it might be
11 required to make a filing of the 1056. Does
12 this Commission have a role in notifying the
13 effective entities prior to our making a
14 ruling today that we're going to look very
15 hard at groups that may spend \$1,500 in some
16 fashion to promote or influence the election
17 or defeat of the referendum?

18 MR. BILLINGS: Well I think you do in
19 some sense. Again, you're talking about core
20 political speech and I do think there are
21 some responsibility to put people on notice
22 that they are engaging in certain activities
23 that it may trigger some sort of financial
24 reporting. And in saying that, I don't mean
25 to be critical at all of the Commission or

1
2 the staff and this, unlike other issues, and
3 Jonathan would agree on that, that this is
4 not an issue that either the staff or the
5 Commission has spent a lot of time on in the
6 past.

7 I mean it's not an issue unlike a
8 candidate that there is somebody out there
9 who's running for office who is not -- who's
10 not reporting. It's certainly their
11 obligation to learn what they need to do.
12 But your staff does reach out to them and
13 say, hey you need to do this. I think I am
14 correct that nobody has been doing that in
15 regards to referendum campaigns, no people
16 looking at the newspaper and saying, well
17 this organization seems to be quoted a lot.
18 Maybe we ought to let them know that they may
19 have some responsibility to file.

20 I guess I'm of two minds on the sort of
21 practical sense. I'm not sure imposing that
22 duty on the staff is a reasonable one. But
23 on the other hand, when you're talking about
24 First Amendment expression, before you're
25 going to tell somebody that sort of, they are

1
2 somehow regulated, that you think there is
3 some notice – they ought to be put on notice
4 for that and then they can you know, conduct
5 their activities appropriately.

6 HON. KETTERER: Anything further for
7 him?

8 MICHAEL FRIEDMAN: Thank you.

9 HON. KETTERER: [Unintelligible]

10 MAVOUREEN THOMPSON: Yes, couple
11 questions. Dan or Bill or both, would you
12 say that either through staff time or
13 research – staff research and so forth for
14 presentations and so forth, MHPC has spent
15 more than \$1,500 working towards the – I mean
16 the passage of Tabor?

17 MR. WILLIAM BECKER: In terms of our
18 staff time, we've allocated it out, not
19 towards the passage or defeat of Tabor, who's
20 really been prior provided, we've been
21 basically the extras, contacting,
22 expenditure, limitation laws, now in the
23 state for well over three years. Now that's
24 when we first issued our very, very, very
25 first report as an organization. We wrote

1
2 them [unintelligible] tax and expenditure
3 limitation bills and then spent a number of
4 months drafting our legislation for what it
5 would look like in the State of Maine.

6 So not for the passage or defeat of
7 Tabor, but for becoming policy experts in the
8 field of tax and expenditure limitation laws.
9 That's what we have done. That's what we
10 continue to be and that's what we've done for
11 many other press, is provide them with
12 answers. I accept [Unintelligible] from them
13 says what is demanded when this happens?
14 Well what happens along those lines? Well
15 what is the handle on that?

16 It's really in the context of the Maine
17 economy and that's really in the context in
18 which we talk about.

19 MAVOUREEN THOMPSON: So I think I heard
20 an earlier speaker say that - that the Policy
21 Center actually wrote the Tabor referendum
22 and so forth?

23 MR. BECKER: No -

24 MAVOUREEN THOMPSON: (Interposing) Or to
25 what extent were you involved in that?

1
2 MR. BECKER: All right, we wrote back in
3 2004 – we wrote model legislations saying
4 okay, this was such a great idea in some
5 other states. What would it look like in the
6 state of Maine? And we spent about three or
7 four months writing that, talking to experts,
8 economists, BHCs all over the country and
9 then put it out there as model legislation
10 and two, it moved forward separately in two
11 different ways, absent, separate from our
12 position.

13 One to Senator Mary Andrews of York,
14 doing it forward in a legislature as a piece
15 of legislation and that was actually somewhat
16 amended before it got there and secondly,
17 Mary Adams [Unintelligible] submitted it as a
18 citizen's initiative and that too was amended
19 between the revisers office the secretary of
20 state's office before it got sent out as the
21 Taxpayer Bill of Rights. Our role is almost
22 a year earlier than that, drafting a model
23 legislation to say how it would work in
24 regards to Maine law.

25 MAVOUREEN THOMPSON: Did Andrews or

1
2 Adams get your participation from the Center
3 when in fact their bills were debated before
4 the legislative committee?

5 MR. BILLINGS: We were called to
6 testify, by the Tax Committee primarily.

7 MAVOUREEN THOMPSON: And were pros and
8 cons indicated in that? Sometimes the
9 legislature will ask for people who are pro
10 legislation and con.

11 MR. BILLINGS: Yes.

12 MAVOUREEN THOMPSON: And either to sign
13 up and indicate or just to take turns and so
14 forth for the thing. Has there been a
15 testimony?

16 BILL BECKER: We represented basically
17 the office of the model legislation. That's
18 the way we were represented.

19 MAVOUREEN THOMPSON: So you didn't - you
20 were not like on the pro side or the con side
21 in terms of -

22 BILL BECKER: (Interposing) I think we
23 had been perceived that we went on the pro
24 side because wrote it. We were obviously
25 proud of something that we had drafted two,

1
2 you know, a year earlier. But we represented
3 [Unintelligible] experts as the policy
4 experts on that piece of the model
5 legislation.

6 MAVOUREEN THOMPSON: So I understand Mr.
7 Billings saying that Topsham may in fact have
8 done something that they also have to file a
9 1056 on and they are probably completely
10 uneducated about that thing. But why would
11 the Policy Center choose not to file a 1056
12 beyond this, based on what you just said in
13 terms of having written the legislation
14 barring some further amendments later and so
15 forth, participating in a lot of public
16 discussions and so forth and obviously spent
17 three months writing it and so forth so
18 there's staff time involved in this, et
19 cetera, et cetera just on the face of it.
20 And then testifying on its behalf before a
21 legislation committee? On the face of it, to
22 me, it would seem that the Policy Center is
23 embedded in the passage of Tabor and so I
24 wouldn't understand unless I'm missing
25 something, why you would choose not to file a

1056-B report and let it go and even avoid this discussion and debate.

MR. BILLINGS: Well the first thing is, all of the part about writing the model legislation and the testimony at the legislature has nothing to do with the referendum. That was all well before -- certainly writing the legislation was well before any signatures had been gathered and the testimony of the legislature was before the bill had been approved to be on the ballot.

So I think that right there shows the difficulty that an organization such as the center has in drawing a line. That was all activity that happened before there was any referendum to be considered.

MAVOUREEN THOMPSON: Right so -- so one would say you are not a PAC because of that and so forth. You were already in existence and you weren't -- did not become a center in order to pass Tabor. But I'm talking about the 1056 in terms of the history it supports and so forth, the authorship of it, the

public display of support and so forth -

MR. BILLINGS: But the -

MAVOUREEN THOMPSON: (Interposing) Why would you choose not to fill out a 1056 which does not imply tax status or [Unintelligible] in fact says you are not a PAC. So I'm trying to understand -

MR. BILLINGS: (Interposing) Well it, it -

MAVOUREEN THOMPSON: -Why would you not fill out a 1056?

MR. BILLINGS: Well I think there's two things. The first is, what is the purpose of the center's activities and the purpose of the center's activities are not for advocating the passage of a referendum. Everything that the center is involved in is within its non profit purpose. The second point is, the center stops short of directly advocating passage of the referendum. And what we're asking is, that's where you should draw the line. That unless somebody is spending money telling voters how they should vote, using the magic words, vote for or

1
2 support that, that's where the line should be
3 drawn.

4 So there's two points, number one that
5 the center believes that its activities, the
6 purpose of its activities and the statute as
7 written does say, does use the word purpose
8 and they are saying that their purpose is not
9 for promoting the referendum. It's in their
10 general non profit purpose that existed
11 before there was a referendum and
12 [Unintelligible} after the referendum.

13 But the second part is, is - is looking
14 at what their actual activities have done and
15 nobody has come forward with anything that
16 shows an MHPC or any of their representatives
17 who said directly, people should vote for
18 this referendum.

19 MICHAEL FRIEDMAN: People are too smart
20 for that though. Let me just - I don't
21 disagree -

22 MAVOUREEN THOMPSON: (Interposing) I
23 didn't hear what you said.

24 MICHAEL FRIEDMAN: I said people are too
25 smart for that. I don't disagree with your

1
2 first premise. I have some concern about the
3 second, because when Mr. Becker spoke just a
4 few minutes ago you know, the English
5 language, we had this debate the last time
6 around. In English, the English language is
7 quite telling and what Mr. Becker said was
8 that the Heritage foundation didn't promote
9 or defeat the ballot question or wasn't
10 advocating for the promotion or a defeating
11 of the ballot question. He didn't use
12 influence which is also part of the 1056-B
13 requirement. And you know, while I can agree
14 with your assertion that there might be
15 constitutional issues, I don't think it's the
16 Commission's responsibility to rule or to
17 determine whether what the legislature set
18 forth is constitutional or not. That's for
19 some greater power.

20 I think, as we look at it you know,
21 based upon what I've seen here, based upon
22 what I've seen or heard on TV and on radio, I
23 don't think there's any question that the
24 Heritage foundation wants to influence this
25 ballot question. Now the larger question for

1
2 me is, do we as the Commission, have some
3 responsibility to all those groups who may
4 have been acting under a supposition for
5 many, many years that they didn't have to do
6 this.

7 And I think that we owe to these groups
8 to in some way, send a message that perhaps
9 we're going to interpret this section at
10 least for our purposes at this initial
11 setting, much more broadly.

12 MR. BILLINGS: I guess two reactions to
13 that, first we haven't argued that their
14 actions haven't - wouldn't be, have an
15 influence on that. I don't think that's an
16 argument you could make with a straight face.
17 So I haven't made that argument. The second
18 part about the constitutional considerations
19 I mean I believe you take an oath to not only
20 uphold the laws but also the constitution of
21 the state when you take this job.

22 So it's not simply a matter of you know,
23 considering the statute. It's considering
24 the constitutional framework that the statute
25 falls into. So I do think you do have - your

1
2 duty does include a broader, a broader
3 consideration, so -

4 MICHAEL FRIEDMAN: But I think we can
5 presume that the legislative enactment is
6 constitutional at our saying here. I don't
7 think - you're talking primarily a lay board.
8 A lay board is not going to be involved in
9 with constitutional issues but they can read
10 the statute.

11 MR. BILLINGS: Oh, I think everything
12 that you do here involves constitutional
13 issues. I mean you're dealing with
14 fundamental First Amendment rights and I
15 think you just sort of put the constitution
16 aside and I don't think you can do that in
17 this area. And particularly again, I think
18 if you look through the case law which you
19 know, your staff and counsel had done, the
20 courts are even more careful in this area
21 than they are in the area of candidate
22 election. I think in the area of candidate
23 elections one of the justifications for
24 regulation is the corruption and the
25 appearance of corruption. So because of

1
2 that, there is a justification for pretty -
3 justifying for case law limitations on money
4 involved in candidate elections.

5 But the courts have also said in this
6 area, the whole corruption and appearance of
7 corruption, that's not an issue. Basically
8 the courts have said that the state have a
9 interest in the public knowing where the
10 money is coming from to promote passage or
11 repeal (phonetic) a referendum and that's
12 what the state's interest is in requiring
13 disclosure.

14 What the cases have gone on to say is,
15 you draw the line in the direct advocacy and
16 we are saying MHPC has not directly advocated
17 so we don't fall under these regulations.

18 MR. BECKER: I think we went to through
19 the question earlier as well. Couple points,
20 one comparison with voting is not really an
21 appropriate comparison. The more accurate
22 comparison might be with a Muskie School or a
23 Margaret Chase Smith center for public
24 policy. Both are research and educational
25 organizations as are we, they happen to be

1 affiliated with a college or a university.

2 We happen not to be affiliated with a college
3 or university.

4
5 This past fall, a large grant was given
6 to the Margaret Chase Smith Center and to the
7 Muskie School to do exactly what we did,
8 which was to research and to study the
9 Taxpayer Bill of Rights initiative that is
10 now of course the citizens initiative and
11 then to publish and disseminate the results
12 of that report.

13 That is a different -- that is a
14 different beat than creating an African
15 Studies program. Those are research and
16 educational organizations as are we. They
17 are a 501C3, we are a 501C3. We are all
18 engaged in public policy, research analysis
19 and education. That's the business that we
20 are in. That's what we do as an
21 organization.

22 Secondly, on the constitutional issue, I
23 do agree with staff's conclusion that the
24 states may constitutionally require -- that
25 they are not clear however, as to whether a

1
2 state may constitutionally impart disclosure,
3 of expenditures and initiatives and
4 referendums that fall short of express
5 advocacy.

6 The third is, you have distinction
7 between what we do. You've got an example of
8 our work. I mean we have PhDs economists,
9 masters economists that we have
10 [Unintelligible] {coughing} on a regular
11 basis, on a daily basis. Our reports talk
12 about the economic benefits that their
13 reports do computer generated models. Mr.
14 Crasnick's organization puts out stuff like
15 that. That's what he's filing about
16 tomorrow. That's not stuff that we do. We
17 don't put out that sort of material, never
18 have, never will. That requires a 1056-B and
19 appropriately so.

20 Our role is as a public policy, research
21 and educational organization which studies
22 issues and as long as [Unintelligible]
23 [coughing] much after these organization is
24 not.

25 HON. KETTERER: Thank you. Any further

1
2 questions for either the two witnesses for
3 your report.

4 JONATHAN WAYNE: So would you mind if I

5 -

6 HON. KETTERER: Yes, just let me see if
7 any Commission members have questions. No
8 further questions, okay Jonathan go ahead.

9 JONATHAN WAYNE: I wanted to ask, how
10 can you be so sure that you haven't engaged
11 in express advocacy and I just wondered
12 [Unintelligible] turn to you and said, give
13 us a yes on you know, one statement and then
14 you replied [Unintelligible] no we're are a
15 tax-exempt organization and we are not really
16 urging you one way or the other but here's
17 our analysis.

18 MR. BECKER: I can tell you exactly what
19 I said because -

20 JONATHAN WAYNE: (Interposing) Well just
21 in general you know, in the context of what
22 the spirit of the law is trying to do and
23 what people take away from your presentation
24 in the media, how can you be so sure you
25 haven't expressly advocated in support of

1
2 TABOR.

3 MR. BECKER: Because I haven't expressly
4 advocated. As a matter of fact what Dennis
5 Bailey said at the end of that interview
6 yesterday was, could Becker keep his - I said
7 specifically I said, Maine voters would be
8 wise to look at this issue I said, and if
9 they like the current status quo then they
10 should vote against it. If they think that
11 we need a new direction and a new opportunity
12 then there is much about the Taxpayer Bill of
13 Rights that they might want to study.

14 Dennis Bailey said then, to my left, he
15 said because he can't specifically say vote
16 yes on one vote no on one, I vote no on one
17 and he said that is right. Because I can't
18 and I won't, I cannot put out stuff like that
19 and I would not put out stuff like that which
20 specifically says, here Dan Tabor wipes out
21 real tax relief vote no and that is express
22 advocacy. My organization has policy
23 restriction. Their organization is doing
24 political advocacy. There is a difference
25 between policy and politics.

1
2 JONATHAN WAYNE: You know when I hear
3 the presentation, just I can offer you my
4 point of view, I find what Dan Billings was
5 saying, which is that yes, this organization
6 is trying to influence, would have to – if it
7 had to file a report for it, it would
8 actually have it filed a positive amount
9 because it is – I'm paraphrasing here but it
10 is – the organization is trying to influence
11 this ballot question. I find that believable
12 when you, you know on your Web site like it
13 says from a power point presentation it says
14 what life could be with the Taxpayer Bill of
15 Rights, increased number of jobs, increased
16 wages [Unintelligible].

17 You may not be paying [unintelligible]
18 aren't you trying to influence a ballot
19 question here in Maine.

20 MR. BILLINGS: That's based on the
21 research and the analysis that we've done. I
22 mean, spend time researching it and analyzing
23 and believe and have believed since day one,
24 that government restraint is a good rage of
25 real Maine's economy. That has not changed

1
2 since day one in terms of – and again,
3 whether it be Margaret Chase Smith, whether
4 it be Muskie School of Public Service, they
5 too come out with reports that say that
6 things are good or bad, whether they be on
7 the laws that we are dealing with on the
8 legislative level or even on citizens and
9 issues and have on this very issue.

10 So again, I'm not disagreeing with
11 either of you in the sense of saying no, we
12 definitely believe that tax and expenditure
13 limitations would be good for the state of
14 Maine and have made a case to that effect.

15 JONATHAN WAYNE: I guess my last
16 question is, if the Commission members decide
17 that they want to apply the statute as
18 written, I think it's likely that you have
19 made expenditures to influence this ballot
20 question and they will not ask you to file a
21 1056-B report, could you or Dan speak to how
22 burdensome that would be on your organization
23 or how unfair that would be given the First
24 Amendment concerns.

25 MR. BILLINGS: I think the first problem

1
2 would be drawing lines. What type of
3 activities – I guess it's first, even if you
4 read this broadly, MHPC hasn't spent any
5 money on ads, television ads, mailings, radio
6 ads or anything else. So there's not, there
7 are certain invoices they can go to and say,
8 yes, this was an ad we ran on Tabor that
9 needs to be reported. This is – it didn't do
10 any of that.

11 So the only thing that even with the
12 broad reading of the law that would bring for
13 reporting, would be staff time. And that
14 would get very complicated very fast. The
15 first thing – I mean some of it would be
16 fairly easy, time spent at the debate, that
17 kind of thing. You could – I'm not sure you
18 could do it tomorrow. But you know, Bill at
19 some point could probably go back to his
20 calendar and figure out how many – how many
21 forms he prepared to add and that kind of
22 thing and come up with some number of hours.
23 That would be quite burdensome.

24 But then the other issue is, on a day to
25 day basis, where the center does research

1
2 analysis of public policy issues and some of
3 that may relate to the Taxpayer Bill of
4 Rights, where does that activity relate to
5 the referendum and where does that activity
6 related to just the general purpose of the
7 organization? Again, that's why and express
8 advocacy test makes sense because you have a
9 break line and if you are over the line you
10 report it and if you don't and there's - that
11 works from an administrative point of view
12 and also from the regulating community of
13 saying, my crops are fine, I need a few
14 [Unintelligible] on the other side I don't.

15 And then the other issue when and I have
16 to admittedly have this problem with my
17 lawyers as well as - you're sitting at your
18 desk and you're working on something and the
19 phone rings and it's a reporter and you
20 answer the question and it's related to a
21 certain thing. I am sure Bill hasn't kept
22 track of his time on that in trying to come
23 up with some sort of accounting of that would
24 be very difficult.

25 MR. BECKER: I would also add and anyone

1
2 that's been to our presentations, we often
3 get chastised because we don't talk about the
4 initiative. We talk about Maine's economy.
5 About two thirds to three quarters of the
6 time that we are dealing with our
7 presentations we talk about the job losses
8 and the loss of students in K to 12 schools
9 and we talk about the structure of Maine's
10 economy right now. That's the bulk of what
11 we talk about [Unintelligible] [coughing] and
12 in the presentations that we make.

13 HON. KETTERER: Anything further
14 Jonathan?

15 JONATHAN WAYNE: No.

16 HON. KETTERER: Okay.

17 MAVOUREEN THOMPSON: I have a question.

18 HON. KETTERER: Yes.

19 MAVOUREEN THOMPSON: Do you take any pro
20 or con stance on any other public issues?

21 MR. BILLINGS: We don't take any pro or
22 con stance on any issue.

23 MAVOUREEN THOMPSON: I'm struck by the
24 use of the words spending frenzy in your
25 presentation. It reminds me of the word

1
2 Hurricane TABOR. I think it's heavily laden
3 connotation. It seems to me like it's
4 advocating a stance in terms of saying
5 spending frenzy. It doesn't sound to me as
6 though this is - one would say that this is a
7 very academically oriented, objective visual
8 ground before the public.

9 BILL BECKER: Obviously that's for a
10 power point presentation which is -

11 MAVOUREEN THOMPSON: Right.

12 BILL BECKER: - in front of an audience
13 which you have to keep their attention for a
14 short period of time.

15 MAVOUREEN THOMPSON: No, well -

16 BILL BECKER: (Interposing) But in our
17 reports that you have there, in that binder,
18 you see 20 to 30 substantially, sometimes
19 hundred page reports that lay out all the
20 economic cases. That's just a public policy
21 presentation to an audience to whom we are
22 trying to get their attention.

23 COMMISSION MEMBER: Let me finish -

24 MR. BILLINGS: (Interposing) I would not
25 be advocating for [Unintelligible]

1
2 COMMISSION MEMBER: Which is my concern
3 obviously.

4 MR. BILLINGS: And I need to report
5 also, realize that Maine Heritage Policy
6 Center doesn't claim not to have a point of
7 view. That obviously it's non profit
8 purpose, it has a point of view and that's
9 made clear and they are not claiming that the
10 organization doesn't have a kind of point of
11 view. But for argument, simply having a
12 point of view or having a certain perspective
13 on issues, doesn't bring you under regulation
14 via organizations such as the others.

15 HON. KETTERER: With a view towards
16 drawing some of this towards a conclusion, my
17 concern is this, that I feel like the
18 discussion is centering too much on -- as if
19 today there will be some ultimate ruling
20 entered that either requires you to meet a
21 filing deadline or freeze you for that
22 requirement. And I just don't see it that
23 way.

24 To me this is something that came in at
25 the last minute. It's a huge issue. It has

1 enormous public policy implications and as
2 important as this group is, there are other
3 groups that appear to be similarly situated
4 that some ruling that we would make, would
5 touch them. So it seems to me that the
6 prudent thing to do rather than let you go on
7 for a couple more hours and adding some
8 comments and some constitutional issues,
9 hearing from Bill again and then sort of re-
10 plowing what express advocacy is, I mean it
11 seems to me what the staff is saying to us
12 is, it doesn't look like it's a PAC but it
13 might have other filing requirements but it
14 might not and it's a big issue.

15
16 It's too much of a short turnaround with
17 them issuing checks to candidates and the
18 like. It's not getting the proper attention
19 it deserves and I think that the prudent
20 thing to do for the Commission would be to
21 ask staff and counsel to review it further.
22 Do additional research on the issue, receive
23 input from other organizations that may be
24 similarly situated and bring it back to us
25 when we can do something more about it,

1
2 because I think we could go on for a number
3 of hours today and [Unintelligible]
4 [coughing] we are going to decide the
5 ultimate issue which I think would be very
6 unfair to this – to the group before us.

7 And other groups did not have sort of a
8 full briefing on the issues and staff did on
9 a very quick turnaround time. So I think
10 rather than, we could go through it for a
11 number of more hours. Rather than do that, I
12 think as far as I'm concerned, staff has made
13 that recommendation in writing. I don't see
14 the reason not to follow it. Then if
15 somebody wants to make that motion, we can
16 then discuss whether or not that's what we
17 want to do.

18 MAVOUREEN THOMPSON: I so move.

19 MICHAEL FRIEDMAN: I'll second it.

20 HON. KETTERER: The move and seconded
21 adopted staff recommendation which in part
22 asks that counsel and staff be given
23 additional opportunity to research the
24 issues, receive input from other
25 organizations that could be affected by a

Commission ruling interpreting 1056-B and to propose formal interpretation through either rule making or other means but not this meeting.

So that's what the actual pending motion is. Any discussion on the pending motion?

MICHAEL FRIEDMAN: I think it makes a lot of sense. As I sit here today, if I were asked to rule, I probably would (phonetic) say that they required a 1056-B filing. But I think it's also unfair to do that given the state of affairs since the legislation was passed in 2000. I think it is a significant issue to a number of entities other than the Heritage foundation. And I think we ought to hear from everybody including those who feel it important to make the filing. So that then the staff can better evaluate the issue. I am sure that Dan will provide some legal analysis to the staff. Staff's own counsel will do the same. And then at some point in the near future, will come back to us so we can make a more reasonable study of the issue and make a determination as to whether in

1
2 this instance, there ought to be a 1056-B
3 filing and again make that known to those
4 people who engage in this kind of activity.

5 HON. KETTERER: Thank you. Anything
6 that you want to say?

7 MAVOUREEN THOMPSON: In the event this
8 motion passes, what would be the time line do
9 you think Jonathan?

10 MR. WAYNE: Well I guess the crucial
11 question for you is do you need to resolve
12 this within the next couple days or not.

13 HON. KETTERER: I don't see it being in
14 the next -

15 MR. WAYNE: I don't see it. I think it
16 would be really hard.

17 HON. KETTERER: I need [Unintelligible]

18 MR. WAYNE: Yes, then that's doable.
19 You know, I mean I think three or four weeks
20 - I mean at your November meeting. The way
21 this reporting works there is a 1056-B report
22 due six days before the election and 42 days
23 after the election. Now that meant 42 day
24 report is due in mid December. So -

25 HON. KETTERER: I don't think it will

1
2 slip through the cracks, if that's what
3 you're worried about, because this is an
4 important issue that's going to get a lot of
5 attention and the groups that are affected by
6 what the ruling would be one way or the other
7 are going to care what the outcome is and are
8 going to want to have input with the staff
9 and they are want to have written submissions
10 and the like. And so I think we will be
11 following up on it and it is an important
12 issue and just - I realize that in the middle
13 of this [Unintelligible] to say that Mr.
14 Lindemann before he goes out the door, you
15 know, I am pleased that you brought it to our
16 attention. I think the discussion of the
17 issue has value and we don't care whether you
18 reside in Maine or not. A lot of good ideas
19 come from outside of Maine and we are glad
20 that - anybody that can bring us some stuff
21 that can help clarify our job and do good
22 work at it, we appreciate. So we appreciate
23 your being here. Back to you.

24 MAVOUREEN THOMPSON: Well I appreciate
25 you giving us some sense of a time line and I

wouldn't want to wait a year.

HON. KETTERER: No.

MR. WAYNE: Certainly by the December meeting at the very latest yes. Thank you for [Unintelligible]

HON. KETTERER: Is the Commission ready for a vote? Okay those in favor of adopting the pending motion kindly indicate in the customary fashion. Thank you hands down. Those opposed? There are none. The vote is three to zero. The pending motion carries. I think staff knows what our instruction is. I thank all the participants who are here and their counsel and you may want to coordinate with Jonathan staff, on where this goes from here and just for the record, there isn't any filing requirement for -

MR. BILLINGS: I just say, obviously if the Commission, we know we should have filed a 1056-B so we will not be making a filing tomorrow. Obviously if the Commission at a later date decides to take up a decision we will act appropriately, but -

HON. KETTERER: It won't be a late

1
2 filing.

3 MR. BILLINGS: Right, I just want to put
4 on the record we are not thumbing our nose at
5 the Commission. We try to be completely
6 cooperative and -

7 HON. KETTERER: (Interposing) We never
8 think that.

9 MR. BILLINGS: -In the future as well.

10 HON. KETTERER: Thank you for your
11 input.

12 MR. BILLINGS: Thank you.

13 [END OF TAPE 10-31]

14 [END OF HEARING]

C E R T I F I C A T E

I, Lisba Osakwe certify that the foregoing transcript
of proceedings the Maine Ethics Commission, Docket No.
- - was prepared using standard electronic
transcription equipment and is a true and accurate
record of the proceedings.

Tape # 10-31

Counter #s N/A to

Signature Lisba Osakwe

Date February 23, 2007

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